IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.6334 OF 2005

Suresh Kanji Solanki, .. Applicant
Vs
Dilip Govid Baria and anr .. Respondents.

None for the applicant.
Mr A.S.Shitole, APP for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 6th JUNE, 2006

P.C.:

1. None appears for the applicant. Heard Mr Shitole, learned APP for the respondents.

2. The applicant has prayed for leave to file appeal under section 378 of the Criminal procedure Code, against the judgment and order dated 26.7.2005, by which the respondent-accused has been acquitted of the offence punishable under section 138 of the Negotiable Instruments Act (for short, "the Act"). I perused the judgment and other material on record. it is clear that the applicant has failed to prove that Rs.1,60,000/- were borrowed by the respondent-accused from time to time during the period between February-March,2002. The evidence in that regard is not consistent as seen from the observations made in paragraph 5 of the impugned judgment. According to

the defence version, the cheque and other documents were virtually snatched from him by force for which a police complaint was lodged. The NC report lodged by the respondent is a part of the record. Even the alleged transaction of the accused, as a part of which the questioned cheque was issued, was with the complainant's brother and not with the complainant as seen from paragraph 6 of the judgment. The complainant has also failed to prove that on the date of issuance of the cheque the accused had legally enforceable liability to pay the amount of cheque and that he was entitled to recover the said amount. In the circumstances, this is not a fit case to grant leave under section 378 of the Code to file appeal against the impugned order. The application is accordingly rejected.

(D.B.BHOSALE,J.)